114.   Mr. Schaaff responded to this e-mail by inquiring whether there was any way to achieve QuickTime playback without rewriting everything as an ActiveX control. Such a rewrite would require that Apple create two separate, distinct QuickTime browser plug-ins for Netscape Navigator and Microsoft Internet Explorer 4.0 since Netscape is not ActiveX compatible. (Schaaff Depo., p. 143) (TX:274) Mr. Schaaff commented that he would at least expect Microsoft to maintain compatibility with existing, widely adopted standards, such as the Netscape plug-in API. (Schaaff Depo. p. 144) (TX:274) Mr. Schaaff received no response from Microsoft to this e-mail. (Schaaff Depo., pp. 145-46)

ORIGINAL EQUIPMENT MANUFACTURERS AND INDEPENDENT SOFTWARE VENDORS FEAR REPRISAL FROM MICROSOFT IF THEIR BUSINESS CONDUCT DOES NOT CONFORM TO MICROSOFT'S WISHES

115.   Despite the overwhelming success Apple has enjoyed in the multimedia market through QuickTime, original equipment manufacturers and independent software vendors who support, or who are considering supporting, QuickTime fear reprisal from Microsoft.

Compaq

116.   Before the release of QuickTime 3, Apple considered licensing OEMs to distribute QuickTime with the sale of their computer systems. Compaq Computer Corporation, the largest vendor of personal computers in the world, was bundling the previous version of QuickTime with its computers, and was therefore an obvious OEM candidate to distribute QuickTime 3. (Schiller Depo., p. 23)

117.   In fact, Compaq first approached Apple to inquire about licensing opportunities for QuickTime 3. In or about February 1998, Eric Federman, a product manager for the Compaq Presario Division, contacted Phil Schiller, Vice President of

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Worldwide Product Marketing for Apple. Mr. Federman told Mr. Schiller that he was anxious to get QuickTime 3 onto the Presario products as soon as possible. (Schiller Depo., p. 24)

118.   Compaq's inquiry regarding QuickTime 3 followed Compaq's attendance at the Software Publisher's Association ("SPA") conference in late 1997. Microsoft had announced at the conference that it would henceforth support only its new multimedia APIs. This announcement meant that any existing software that worked to play multimedia through other APIs would not work with the new content types, such as digital video disks ("DVDs"). As a result, content providers would have to re-author their content in order to sell their products as a DVD title using Microsoft's multimedia software. (Schiller Depo., pp. 24-26)

119.   At the SPA Conference, Apple presented its QuickTime multimedia software. Apple representatives explained that with the QuickTime 3 format, content providers could transfer their existing CD titles into a DVD product with relative ease. (Schiller Depo., p. 26)

120.   After attending the multimedia presentations by both Compaq and Apple, Mr. David Obelcz, a procurement engineer for Compaq's Presario division, approached Mr. Schiller's product manager, Mr. Steve Bannerman, and expressed excitement about QuickTime 3. Mr. Obelcz requested a meeting between Apple and Compaq to present QuickTime to Compaq's executives and engineers. (Schiller Depo., pp. 26-27)

121.   On March 12, 1998, Mr. Schiller and a number of Apple representatives traveled to Compaq's offices in Houston, Texas, to give a presentation on QuickTime 3. Before the meeting, Mr. Obelcz took Mr. Schiller aside and expressed

concern that the meeting was not going to start off well. Mr. Obelcz showed Mr. Schiller an internal e-mail from the head of the Presario Division, Rod Schrock, stating that he was not interested in doing business with Apple in connection with QuickTime. (Schiller Depo., pp. 27-28)

122. Confident that there was still enough interest at Compaq, Mr. Schiller proceeded with the presentation. The Apple representatives began the meeting by explaining the unique capabilities and features that QuickTime 3 would add to the Windows operating systems installed on Compaq's personal computers. These capabilities and features were not available from Microsoft or from any other vendor. Apple discussed Compaq's ability to license either a royalty-based version or a free version of QuickTime. Apple was prepared to include Compaq in the launch of QuickTime 3 and offered the possibility that Compaq could be the first and, for some period, the exclusive OEM with QuickTime. (Schiller Depo., pp. 31-34)

123. The questions and statements that followed reflected a clear conflict between the Compaq engineers and the Compaq marketing employees. On the one hand, the engineering participants expressed great excitement about the technology embodied in QuickTime 3. On the other hand, the comments made by Compaq's marketing managers showed some resistance to bundling any QuickTime product with Compaq computers. (Schiller Depo., pp. 42-44)

124. Mr. Obelcz's frustration became so great that he stood up and explained to Compaq's marketing team that the technology paths Microsoft had chosen in the past had failed Compaq, and he doubted that Microsoft's latest strategy would fare any better. Mr. Obelcz stated that Apple had the solution in QuickTime, for which there was a much clearer opportunity for success. He explained from the perspective of a

Compaq engineer why the QuickTime 3 software was important to bundle with Compaq's computer products. "Compaq has been screwed before in multimedia by Microsoft," Mr. Obelcz exclaimed, and he reiterated the point that the Microsoft representative had made at the SPA Conference that the use of Microsoft's multimedia APIs would require the re-authoring of completed works. Mr. Obelcz stated his belief that QuickTime offered a better strategy for making hundreds of DVD titles available very quickly. (Schiller Depo., pp. 41-46)

125. At the conclusion of the meeting, the Compaq engineering team stated that they were very pleased with what Apple had presented. As Mr. Schiller was leaving the meeting, Steven Decker, the Director of Procurement in the Presario Division, came up to him and said, "You have to understand what's going on here. They're very afraid of doing anything to upset Microsoft. We are very wary of bundling anything that would upset Microsoft because they touch us in so many places." (Schiller Depo., pp. 46-48)

126. A week after the meeting, Apple was informed that Compaq had decided not to move forward with any licensing plan for QuickTime 3. Compaq, moreover, had also decided to remove all QuickTime products that were currently being bundled with its computers. (Schiller Depo., pp. 48-49)

AVID

127. The fear of retribution from Microsoft has also forced ISVs to consider whether to adopt or continue supporting QuickTime. For example, Microsoft has pressured AVID, a video software producer, to stop supporting QuickTime or face the loss of Microsoft's assistance in the sale of Avid's new video products. (Schiller Depo., p. 73)

128. AVID and Apple have a strong technological partnership. Apple and AVID have collaborated on an important multimedia application called AVID Cinema, a consumer editing video product that relies heavily on QuickTime. (Schiller Depo., p. 73)

129. In January of 1998, Mr. Schiller attended a regularly scheduled quarterly meeting with Cliff Jencks of AVID, at which numerous collaborative technologies and products were discussed. During the discussion, Mr. Jencks stated that he was under tremendous pressure from Microsoft not to support QuickTime. He explained to Mr. Schiller that it was an example of the strength of the partnership between AVID and Apple that he repeatedly resisted pressure from Microsoft to stop supporting QuickTime. (Schiller Depo., pp. 73-74)

130. Mr. Schiller asked Mr. Jencks to provide an example of such pressure from Microsoft. Mr. Jencks explained that Microsoft was about to announce a new channel for selling software and that the channel would be part of the Windows 98 (code name "Memphis") product. This new software channel, he was told, would allow ISVs to sell software to users directly from the users' desktop. (Schiller Depo., p. 74)

131. Mr. Jencks told Mr. Schiller that he had approached Microsoft and the Memphis team about being part of the new software channel to sell their Cinema software. The Memphis team told him that as long as Cinema supported QuickTime, his product would not be part of that sales channel. Mr. Jencks explained that he attempted to explore with Microsoft the possibility of AVID developing new products for the software channel. He was told by Microsoft, "That's not good enough. You need to rip QuickTime out of your product if you want to be in this channel." (Schiller Depo., pp. 74-75)

132.	Mr. Schiller asked Mr. Jencks, "Where is this coming from? Who at Microsoft is so bent on killing QuickTime that they would impact the Memphis team?" Mr. Jencks replied that the directives were coming from the NetShow team at Microsoft. (Schiller Depo., p. 75)

133.	Microsoft's pressure obviously succeeded. On April 6, 1998 at the meeting of the National Association of Broadcasters, Microsoft introduced its AAF format for multimedia authoring. Joining Microsoft as a partner in this announcement was AVID.

TrueVision

134.	Shortly after I joined Apple in February of 1997, I met with Lou Doctor of TrueVision. TrueVision produced a "video capture card," a piece of hardware that could be installed to enhance a computer's ability to work with video images. Mr. Doctor recommended to me that Apple get out of the playback market for multimedia because Microsoft was committed to taking over that market. He explained that Microsoft was cutting deals with third parties, investing money for development and taking other acts to foreclose Apple from that business.

135.	I later learned that Apple executive Phil Schiller heard similar warnings from TrueVision when Mr. Schiller was employed at MacroMedia in 1996 through 1997. Mr. Schiller was involved with the development of FinalCut, a video editing software package that would create significant new desktop video capabilities. FinalCut was developed to be cross-platform. It was initially going to be based on QuickTime for the Mac OS and on Microsoft's ActiveMovie for the Windows operating system. (Schiller Depo., pp. 68-69)

136.   MacroMedia was working with TrueVision to develop a "driver" to ensure that its video capture card was compatible with FinalCut software.   (A driver is a specialized piece of software that links a peripheral device, such as a printer or video capture card, with the operating system.)   When MacroMedia realized that Microsoft was not going to deliver ActiveMovie as promised, MacroMedia decided to alter the development of FinalCut so that it would be based on QuickTime for both the Mac OS and Windows operating systems.   (Schiller Depo., pp. 69-70)

137.   Although this work continued, TrueVision eventually informed MacroMedia that it could no longer continue with the development of a Windows QuickTime driver to support FinalCut.   Mr. Schiller was informed that Microsoft had agreed to invest in Truevision, but only on the understanding that TrueVision could not deliver or support QuickTime drivers for the Windows operating system with TrueVision products.   (Schiller Depo., p. 70)

138.   According to Mr. Schiller, TrueVision and Microsoft reached an arrangement that allowed TrueVision to create a QuickTime driver for its video capture card.   However, the driver could work only with FinalCut, and TrueVision could not market, brand or refer to the driver as a QuickTime driver.   (Schiller Depo., p. 71)

CONCLUSION OF TESTIMONY

139.   As my testimony illustrates, Microsoft does not hesitate to use its operating system monopoly power and application program dominance to try to eliminate competition, acquire control of new markets and block innovation that could challenge its position.   In its recent dealings with Apple, Microsoft has used its power to acquire significant advantages for its Internet browser and impede Apple's QuickTime technology.

140.   By bundling its application programs with Windows, Microsoft can directly introduce its products into an installed base that comprises more than 90 percent of the market. Once Microsoft moves into an application program market in this way, competition and innovation will inevitably be diminished. As our experience with QuickTime shows, Microsoft will seriously disparage and disable competing application programs through its control of the operating system. Because Microsoft can use its monopoly power in this way, consumers are deprived of a fair opportunity to judge competing products on their merits.

141.   Once it controls the market for a particular application, Microsoft will use that power to pursue other objectives. As it did with Microsoft Office for Macintosh, Microsoft will aggressively leverage its control of essential application programs to dominate other markets, such as the market for Internet browsers. The advantages Microsoft gains for its products through this strategy are not the result of technological advances or consumer preference; they result solely from the use of monopoly power.

142.   As the only real competitor to Microsoft in the market for desktop computer operating systems, Apple has a singular appreciation for the barriers to competition in a market dominated by Windows. Microsoft's massive installed base for Windows makes it extremely difficult to convince software developers to adapt their existing programs or write new applications for a competing operating system, even one that offers significant technical advantages. Consumers are reluctant to abandon their investments in applications that run on Windows in order to switch to a new system, despite advantages in price or technical merit.

143.   The barriers to competing directly with Microsoft in the operating system market make the development of cross-platform products, such as QuickTime and

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Internet browsers, critical to the future of the industry. Such cross-platform products offer ISVs and content providers the assurance that their programs will run on all major operating systems without modification.

144.   As described in my testimony, Microsoft has launched a series of anticompetitive measures against Apple's QuickTime. Microsoft has pressured important customers and developers not to support QuickTime. Microsoft has introduced a series of changes in Windows to defeat Quicktime's power and flexibility and to mislead consumers into believing that QuickTime will not operate as designed. Microsoft has tried to force Apple out of the multimedia playback market and to impose standards and protocols that Microsoft will control. Microsoft's actions have compelled Apple to devote critical resources to fix problems introduced by Microsoft's exclusionary tactics, resources that could otherwise be better used for product development and improvement.

145.   Microsoft's success in the browser wars illustrates how quickly Microsoft's strategies can accomplish its intended goals. Given the speed with which Microsoft can attain market dominance, remedial measures directed to the effects of Microsoft's actions in a single market will be too late to preserve competition and too limited to address systemic abuses.
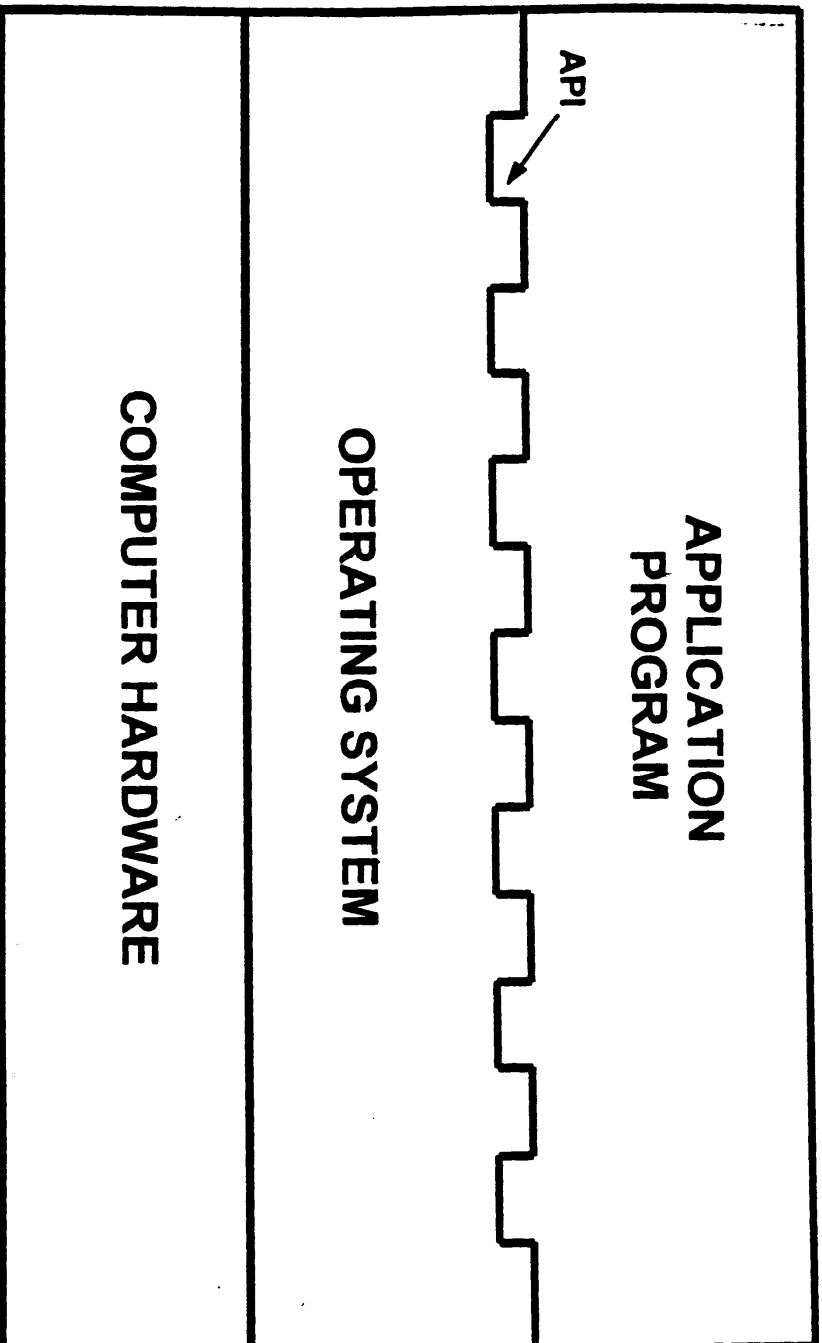
146.   If competition is to be restored and fostered in critical markets, fundamental structural change is necessary. Such change must address Microsoft's ability to move on many fronts, to exploit its power in one of many markets in order to acquire or consolidate control in others. As long as Microsoft can dominate new markets by leveraging its unchallenged control of both the Windows operating system and essential
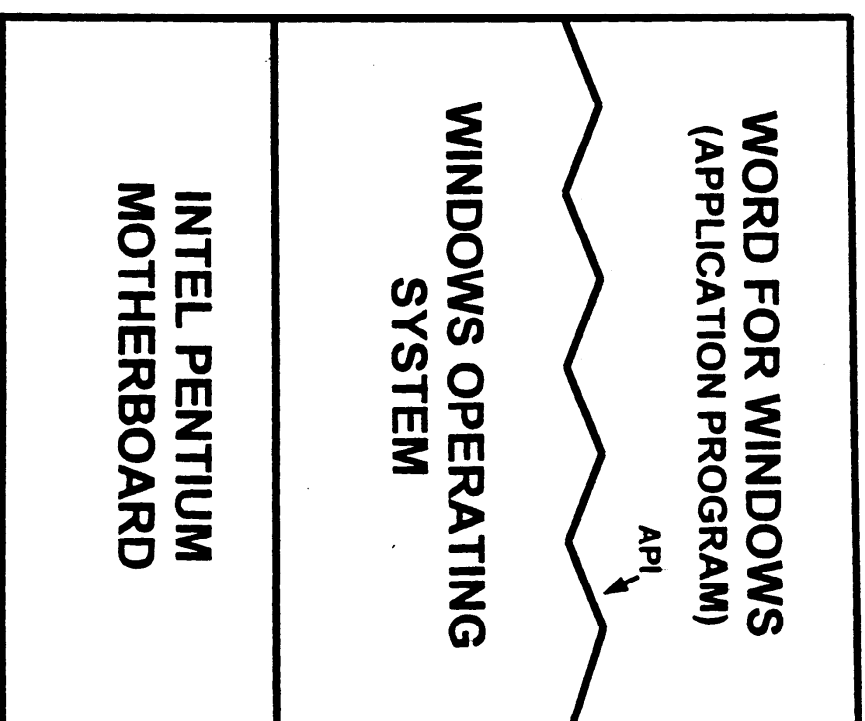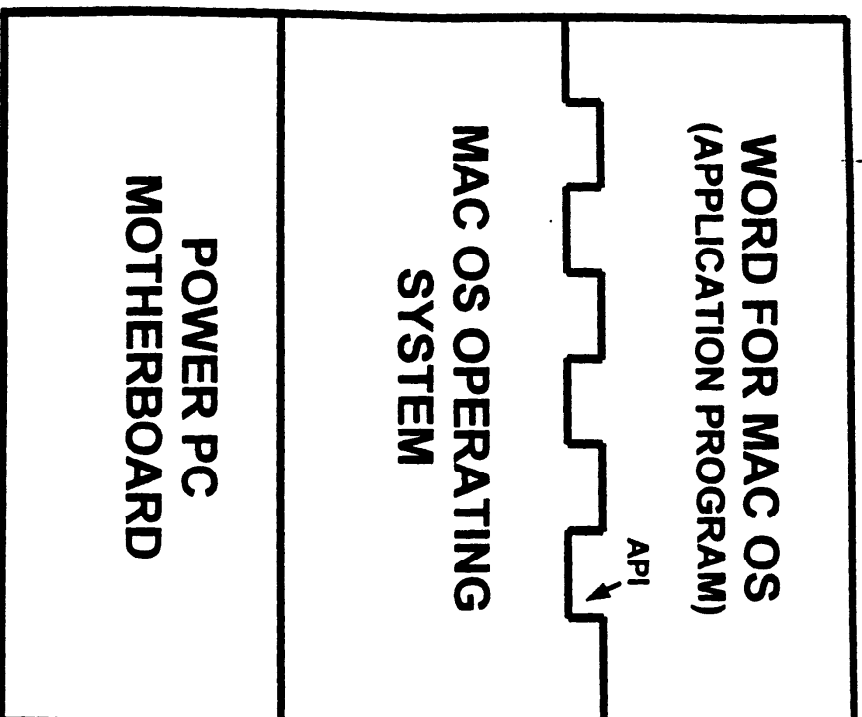
application programs, competition -- which has been the engine of innovation and growth in this industry -- will be curtailed.

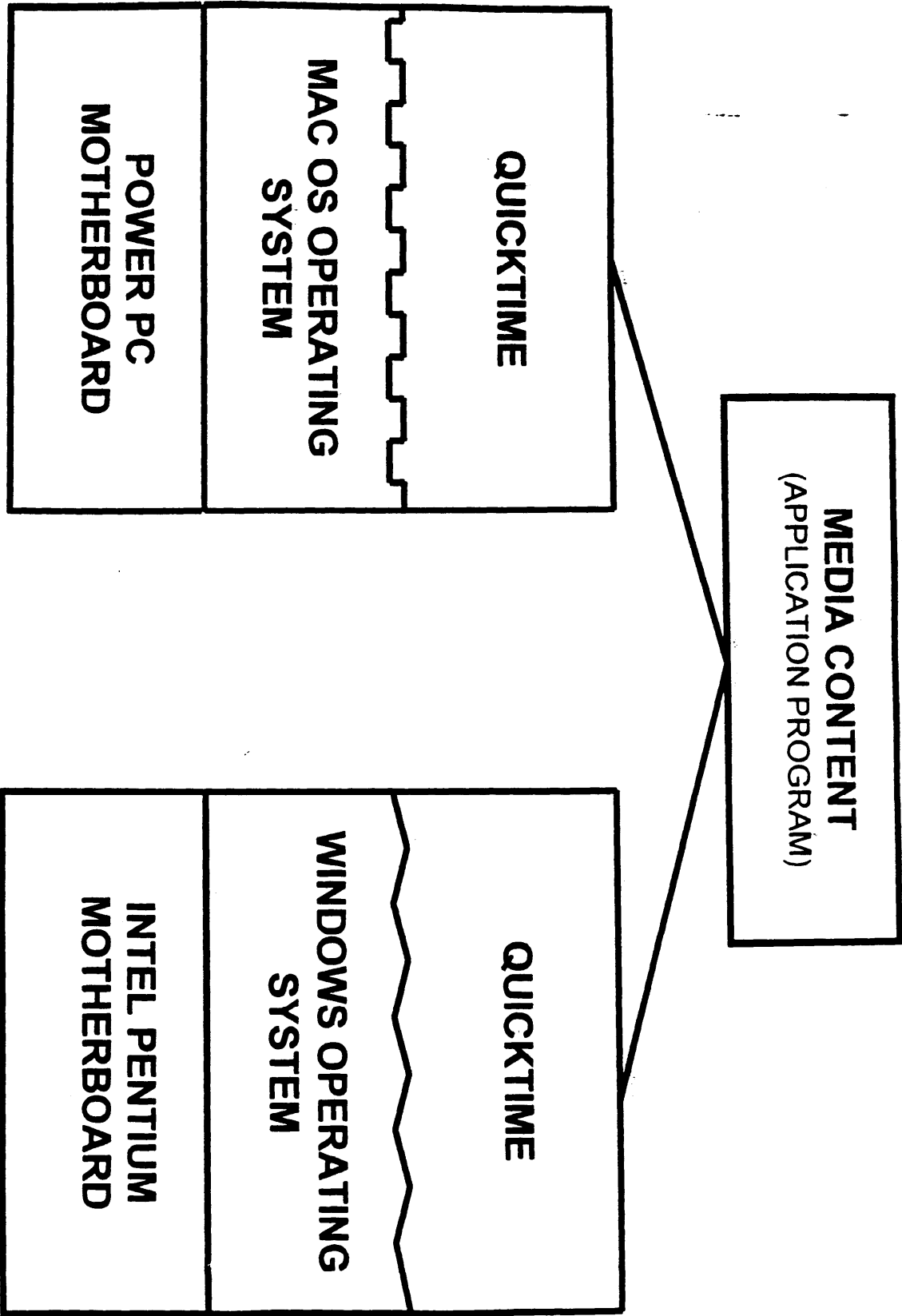I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed in Cupertino, California on October 12, 1998.

_____

Avadis Tevanian, Jr.

WORD FOR MAC OS
(APPLICATION PROGRAM)

API

MAC OS OPERATING
SYSTEM

POWER PC
MOTHERBOARD

WORD FOR WINDOWS
(APPLICATION PROGRAM)

API

WINDOWS OPERATING
SYSTEM

INTEL PENTIUM
MOTHERBOARD

Attachment 2

POWER PC MOTHERBOARD	MAC OS OPERATING SYSTEM	QUICKTIME

MEDIA CONTENT
(APPLICATION PROGRAM)

INTEL PENTIUM MOTHERBOARD	WINDOWS OPERATING SYSTEM	QUICKTIME

Embed
(Media displayed within
web page being viewed)

	Win 95 Netscape 4 QuickTime 3	Win 95 IE 3 QuickTime 3	Win 95 IE 4 QuickTime 3	Win 98 IE 4 QuickTime 3
AVI				
VfW				
FLC				
MOV				
QT				
AIF				
AIFF				
AIFC				
AU				
MID				
WAV				

HREF
(Media displayed in
separate web page)

AVI				
VfW				
FLC				
MOV				
QT				
AIF				
AIFF				
AIFC				
AU				
MID				
WAV				

| Score out of 22 | 22 | 15 | 11 | 4 |

Key:

	Uses QuickTime Plug-In
	Never gets to QuickTime

ATTACHMENT 5

Some of the file types usually associated with ActiveMovie are currently associated with other programs. Because of this, you may be unable to play certain types of multimedia files.
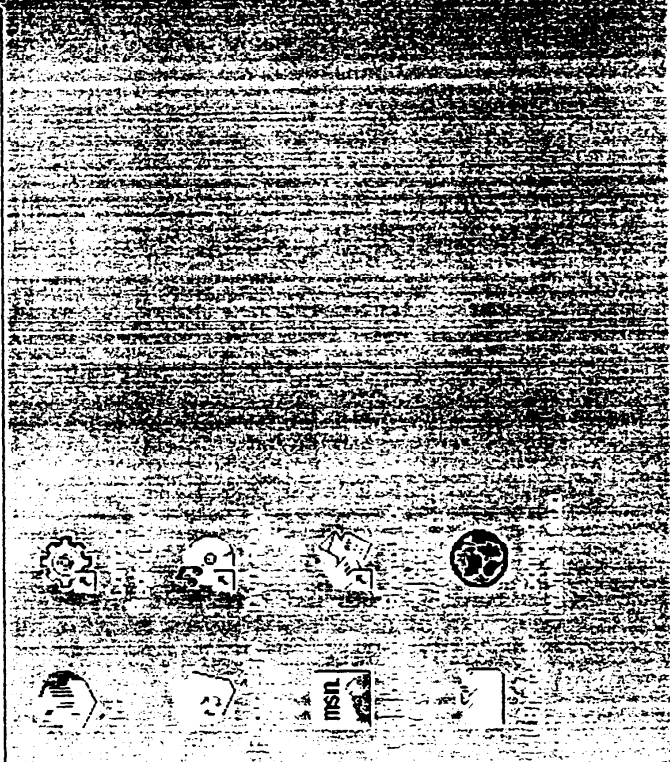
Do you want to fix this (by restoring the file types to ActiveMovie)?

Yes | No | Advanced...

☐ Don't ask this question again

Start | Caution

8:12 PM